

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
ORIGINAL JURISDICTION**

Dated : Nainital the July 4, 2006
Criminal Bail Application No. 569 of 2006
Order on the bail application of accused

CRIMINAL SIDE

Smt. Lata Rani W/o Raj Kumar
R/o Village Habibpur Nibada
Police Station Bhagwanpur
District Haridwar

...Applicant

Versus

State of Uttaranchal

...Opposite Party

Arising out of Case Crime No. 50 of 2006
Under Section 409 of I.P.C.
Police Station Bhagwanpur
District Haridwar

By the court

Hon'ble B.C. Kandpal, J

The applicant has applied for bail in case crime No. 50 of 2006 under Section 409 of I.P.C., Police Station Bhagwanpur, District Haridwar.

Heard Sri Rajendra Singh, learned counsel for the applicant, learned A.G.A. and perused the record.

The applicant is a *Gram Pradhan* and it is alleged in the First Information Report that there was some irregularity in the expenditure made by her for the work done for public purpose. Co-accused Sompal against whom the allegation is that the money has been invested by the applicant with his connivance, has been enlarged on bail by this Court vide order dated 07.06.2006.

Having considered the aforesaid circumstances, I think, that the applicant is also entitled to be released on bail on the ground of parity.

Let the applicant, namely, Smt. Lata Rani be released on bail on her executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of Magistrate concerned.

(B.C. Kandpal, J.)

04.07.2006
ASWAL

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Bail Cancellation Application No. 1505 of 2006

Smt. Vandana		Applicant
	<u>Versus</u>	
Lata Rani and others		Respondents

Mr. S.K. Mandal, Advocate for the applicant.

Mr. Navneet Kaushik, Advocate for respondent Nos. 1 and 2.

Mr. Amit Bhatt, Addl. G.a. for respondent No.3

With

Bail Cancellation Application No. 1504 of 2006

Smt. Vandana		Applicant
	<u>Versus</u>	
State of Uttarakhand and others		Respondents

Hon'ble J.C.S. Rawat, J.

Vide order dated 07/06/2006, this court granted bail to accused Sompal Singh and the following order was passed by this court:-

“Heard Sri Rajendra Singh-learned counsel for the applicant, learned AGA for the State and perused the record.

It was contended that the report has been lodged on the basis of the audit report thereafter, according to the rule 183 of the Audit Manual, the compliance report has been submitted and it has been alleged that the entire irregularities have been rectified. It was further contended that no inquiry thereafter has been held as to whether there was any misappropriation or not.

Considering the facts and circumstance of the case in totality, it is a fit case for bail at this stage.

Let the accused-applicant, Sompal Singh be released on bail on executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of J.M. Roorkee.”

2. After granting bail to Sompal Singh, Smt. Lata Rani moved another another bail application No. 569 of 2006 in this cort in which my brother Justice B.C. Kandpal vide order dated 04/07/2006 granted bail to accused Lata rAni and passed the following order on the said bail application:-

“The applicant has applied for bail in case crime No.50 of 2006 under Section 409 of I.P.C., Police Station Bhagwanpur, District Haridwar.

Heard Sri Rajendrea Singh, learned counsel for the applicant, learned A.G.a. and perused the record.

The applicant is a Gram Pradhan and it is alleged in the First Information Report that there was some irregularity in the

expenditure made by her for the work done for public purpose. Co-accused Sompal against whom the allegation is that the money has been invested by the applicant with his connivance, has been enlarged on bail by this Court vide order dated 07.06.2006.

Having considered the aforesaid circumstances, I think that the applicant is also entitled to be released on bail on the ground of parity.

Let the applicant, namely, Smt. Lata Rani be released on bail on her executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of Magistrate concerned.”

3. Thereafter, bail cancellation application were moved by Smt. Vandana who is said to be deputy Pradhan Village Habibpur, Navada Police Station Bhagwanpur, District Haridwar. The said bail cancellation application were moved on the ground that the accused-Sompal filed compliance letter of the audit report dated 04/05/2005 which is annexure-3 to the bail application purported to have been issued by the Assistant Development Officer (Panchayat), Development Division, Bhagwanpur. It was further pointed out that relying upon the said document bail order was passed by this court, accused Lata Rani also released on bail by the Court on the ground of parity. It was also alleged in the bail cancellation application that respondent Sompal Singh had not complied with the audit report as alleged by him in the bail application vide letter dated 01/05/2005 annexure-3 to the bail petition. It was further contended that the said document is false, forged and manipulated one on the basis of which the bail was obtained by the accused. The applicant further alleged that the bail granted to both of the accused persons by the aforesaid orders be cancelled and proceedings should be initiated against them u/s 340 Cr.P.C.

4. The applicant has filed affidavit in the bail cancellation application. The State has also filed affidavit of Ghanshyam Dutt Sharma, who is stated to have signed on the letter dated 01/05/2005. He has stated in the counter affidavit that he has not issued such certificate to the deponent and it does not contain his signature. The

respondent Nos. 1 & 2 has also filed counter affidavit and supplementary affidavit in support of their case that the said certificate was issued by Ghanshyam Dutt Sharam. They have also filed report of Inquiry Officer, Balram Sharma, Assistant Director Jalagam, Rookee appointed u/s 95 (1) (g) of U.P. Panchayat Raj Act, 1947 to hold enquiry under Rule 3 of **U.p. Panchayats Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997** ('1997 Rules' for short).

5. I have heard learned counsel for the parties and perused the record.

6. Now, it has to be viewed that the letter dated 05/01/2005 which is alleged to have been filed by the respondents was not a genuine one and the said letter was never issued by the Officer concerned. Now, it is to be decided whether this document (Annexure-3 to the bail petition) was ever acted upon by the State or whether any inquiry about its genuineness was conducted by the department. It was brought to my notice that the F.I.R. was lodged on 29/03/2006 and the Inquiry Officer under Rule 3 of '1997 Rules' was appointed on 01/05/2006 who submitted his report on 12/07/2006. Para 12 of the said report reads thus:-

“यहाँ यह तथ्य प्रकाश में लाना अत्यधिक महत्त्वपूर्ण है कि जिला पंचायत राज अधिकारी के अधोहस्तारी को जाँच हेतु जो पत्रावली उपलब्ध कराई है के पृष्ठ संख्या-34 के रूप में सहायक विकास अधिकारी (पंचायत) ने अपने पत्रांक मेमो /प0/आडिट/ 2003-04/ दिनांक 05-01-2005 के द्वारा जिला पंचायत राज अधिकारी को लिखा गया। इस आशय का पत्र संलग्न है कि ग्राम पंचायत हबीबपुर निवादा विकास खण्ड भगवानपुर वर्ष 1999-2000 के विशेष लेखा परीक्षा प्रतिवेदन में जो त्रुटिया प्रकाशित हुई थी। उनका परिपालन कर लिया गया है। और परिपालन से पूर्णतः सन्तुष्ट हैं। उपरोक्त पत्र के साथ कोई अनुपालन आख्या पत्रावली में उपलब्ध नहीं करायी गई।”

7. This letter was produced before the Inquiry Officer from the file of the Panchayat Raj Officer. To verify as to whether such letter was on record or not, I summoned the original record of the District Panchayat Raj Officer. The original record of the department reveals that Smt. Lata Rani, Gram Pradhan submitted an application on

25/02/2006 in which she has stated A.D.O., Panchayat has already given his certificate of the compliance of the audit report, a copy of which was annexed in the said letter. The departmental file also reveals that the said letter was received in the Panchayat Raj Office on 25/02/2006. It is also pertinent to mention here that on the basis of the special audit conducted prior to the submission of this certificate, the D.M. had proceeded on the basis of the special audit report and the report submitted by the department from being the irregularities committed during the tenure of the accused. The matter was processed by the Government and the order of holding the inquiry was received to the office of the D.M. in the month of April, 2006. Thus, it is evident that when the compliance report was submitted, the matter was already under the consideration of the Government for proceeding under rule 3 of '1997 Rules'. When the said letter was received by the District Panchayat Raj Officer, it could not be shown to me that the District Panchayat Raj Officer ever processed the said letter and brought to the notice of D.M. and Government that such letter has been sent to him. The Panchayat Raj Officer did not take any action as it being forged or not genuine. Even he has not made an inquiry from the officer concerned by whom it was purported to have been signed. Thus, the process of F.I.R. and the inquiry proceeded on the one hand and the department did not proceed to verify the veracity of this letter. The said letter was also produced before the Inquiry officer purported to have been issued by the officer concerned who has signed the said letter. The department was processing this letter, as it was genuine one. If the department was of the view that it was forged, he could have very well asserted before the inquiry officer. Though this letter is on the record but nothing reveals that this letter was forged one at present. The State Govt. Had never held an inquiry and it was never concluded that it is forged document.

8. Whether this document is genuine one or not, it can only be decided by the competent authority. The authority did not make any inquiry about its genuineness.

9. In view of the above, I do not find any force in the submission of the learned counsel for the applicant for canceling the bail on that ground alone. The application for proceedings u/s 340 Cr.P.C. against respondent Nos.1 and 2 is also rejected.

10. The Bail Cancellation Applications are disposed of accordingly.

(J.C.S. Rawat, J.)

12.08.2008
Shiv